

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1278

Citations Affected: IC 8-1-2; IC 8-1.5; IC 32-24-2-6; IC 8-1.5-2-11; IC 8-1.5-2-16.

Synopsis: Water matters. Conference committee report to EHB 1278. Specifies the procedures by which a municipality may exercise the power of eminent domain to acquire the property of a public utility. Provides that a municipality: (1) may recover costs associated with acquiring utility property through reasonable rates and charges; and (2) may not impose additional rates or charges to pay for costs associated with acquiring the property by condemnation. Repeals provisions that: (1) permit a public utility to seek judicial review of the public convenience and necessity of the acquisition of the public utility's property by a municipality; and (2) require voter approval of the acquisition by purchase or condemnation of the property of a public utility. Urges the legislative council to assign to a study committee the topic of water rights, drainage, and utilities. **(This conference committee report does the following: (1) Deletes the contents of the bill, including a provision that limits the ability of a municipality or other governmental unit to purchase or condemn the property of water or sewer utilities. (2) Reinserts language urging the legislative council to assign to a study committee the topic of water rights, drainage, and utilities. (3) Specifies the procedures by which a municipality may exercise the power of eminent domain to acquire the property of a public utility. (4) Provides that a municipality: (1) may recover costs associated with acquiring utility property through reasonable rates and charges; and (2) may not impose additional rates or charges to pay for costs associated with acquiring the property by condemnation. (5) Repeals provisions that: (A) permit a public utility to seek judicial review of the public convenience and necessity of the acquisition of the public utility's property by a municipality; and (B) require voter approval of the acquisition by purchase or condemnation of the property of a public utility.)**

Effective: Upon passage; July 1, 2009.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1278 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 8-1-2-92 IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2009]: Sec. 92. **(a)** Every license, permit, or
- 4 franchise granted after April 30, 1913, to any public utility shall have
- 5 the effect of an indeterminate permit subject to the provisions of this
- 6 chapter, and subject to the provisions that:
- 7 **(1)** the license, franchise, or permit may be revoked by the
- 8 commission for cause; or ~~that~~
- 9 **(2)** the municipality may purchase **or condemn** the property of
- 10 ~~such public utility~~, as provided in ~~this section~~. **IC 8-1.5-2,**
- 11 **IC 36-9-23, or IC 36-9-25, as applicable.**
- 12 Any such municipality is authorized to purchase such property and
- 13 every such public utility is required to sell such property at the value
- 14 and according to the terms and conditions as provided in ~~this chapter~~.
- 15 **IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable.**
- 16 **(b)** If this chapter should be repealed or annulled, then all such
- 17 indeterminate franchises, permits, or grants shall cease and become
- 18 inoperative, and in place thereof such utility shall be reinstated in the
- 19 possession and enjoyment of the license, permit, or franchise
- 20 surrendered by such utility at the time of the issue of the indeterminate
- 21 franchise, permit, or grant; but in no event shall such reinstated license,
- 22 permit, or franchise be terminated within a less period than five (5)

years from the date of the repeal or annulment of this chapter.

SECTION 2. IC 8-1-2-93 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 93. Any public utility accepting or operating under any indeterminate license, permit, or franchise granted after April 30, 1913, shall by acceptance of any such indeterminate license, permit, or franchise be deemed to have consented to a future purchase **or condemnation** of its property including property located in contiguous territory within six (6) miles of the corporate limits of such municipality by the municipality in which such utility is located, at the value and under the terms and conditions as provided in ~~this chapter~~, **IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable**, and shall thereby be deemed to have waived the right of requiring the necessity of such taking to be established by the judgment of a court, and to have waived all other remedies and rights relative to condemnation, except such rights and remedies as are provided in ~~this chapter~~ **IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable**, and shall have been deemed to have consented to the revocation of its license, permit, or franchise by the commission for cause.

SECTION 3. IC 8-1.5-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A certificate of public convenience and necessity is not required as a condition precedent to the owning, leasing, acquisition, construction, or operation of a utility by a municipality, even if there is a public utility engaged in a similar service. The acquisition of electric utility property and assignment of a municipal electric utility's service area are, however, subject to the provisions of IC 8-1-2.3 and IC 8-1-2-95.1.

(b) A municipality that wants to own and operate a utility where there is a public utility engaged in a similar service:

(1) under a franchise granted by the municipality; or

(2) under an indeterminate permit as defined in IC 8-1-2-1;

may, after a hearing as provided by section 10 of this chapter, ~~and an election as provided by section 16 of this chapter~~, declare by ordinance that public convenience and necessity require the establishment of a municipally owned utility.

SECTION 4. IC 8-1.5-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. Before a municipal legislative body:

(1) proposes to construct or acquire a utility; and

(2) makes a determination as to public convenience and necessity; it may appropriate out of its general fund an amount not exceeding five percent (5%) of the total estimated cost of constructing or acquiring the utility, as necessary to pay the expenses of a preliminary investigation, surveys, plans, specifications, and appraisals, including engineering and legal expenses in constructing or acquiring the utility. Any action by the municipal legislative body in making an appropriation is final and not subject to review by the department of local government finance. **The municipal legislative body may renew or adjust the appropriation on an annual basis until the construction or acquisition of the utility is complete.**

SECTION 5. IC 8-1.5-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A municipality

owning a utility under this chapter shall furnish reasonably adequate services and facilities.

(b) The rates and charges made by a municipality for a service rendered or to be rendered, either directly or in connection therewith, must be nondiscriminatory, reasonable, and just.

(c) "Reasonable and just rates and charges for services" means rates and charges that produce sufficient revenue to:

(1) pay all the legal and other necessary expenses incident to the operation of the utility, including:

(A) maintenance costs;

(B) operating charges;

(C) upkeep;

(D) repairs;

(E) depreciation; ~~and~~

(F) interest charges on bonds or other obligations, including leases; **and**

(G) costs associated with the acquisition of utility property under IC 8-1.5-2;

(2) provide a sinking fund for the liquidation of bonds or other obligations, including leases;

(3) provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the municipality, not to exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals;

(4) provide adequate money for working capital;

(5) provide adequate money for making extensions and replacements to the extent not provided for through depreciation in subdivision (1); and

(6) provide money for the payment of any taxes that may be assessed against the utility.

(d) It is the intent of this section that the rates and charges produce an income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service. Rates and charges too low to meet these requirements are unlawful.

(e) The board may recommend to the municipal legislative body rates and charges sufficient to include a reasonable return on the utility plant of the municipality.

(f) Rates and charges established under this section are subject to the approval of:

(1) the municipal legislative body by ordinance; and

(2) the commission, in accordance with the procedures set forth in IC 8-1-2.

The commission shall approve rates and charges that are sufficient, in addition to the cash revenue requirements set forth in subsection (c), to include a reasonable return on the utility plant of the municipality if the legislative body so elects.

(g) Except for a municipally owned utility taxed under IC 6-1.1-8-3, the commission shall approve rates and charges sufficient to compensate the municipality for taxes that would be due the municipality on the utility property were it privately owned. These rates and charges in lieu of taxes may be transferred to the municipal general

fund, if the legislative body so elects.

(h) The commission shall grant a request that an increase in rates and charges not be effective until after the occurrence of a future event if the legislative body so requests.

(i) A municipality that acquires and operates a utility under IC 8-1.5-2 by exercising the power of eminent domain may not impose a special rate, charge, surcharge, or other fee, other than rates and charges approved under this section or otherwise authorized by law, on the customers of the utility in order to pay for the costs associated with acquiring the utility through the exercise of the power of eminent domain.

SECTION 6. IC 32-24-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) This chapter applies if the works board of a municipality wants to acquire property for the use of the municipality or to open, change, lay out, or vacate a street, an alley, or a public place in the municipality, including a proposed street or alley crossings of railways or other rights-of-way. **However, this chapter does not apply if a municipality wants to acquire the property of a public utility (as defined in IC 8-1-2-1).**

(b) The works board must adopt a resolution that the municipality wants to acquire the property. The resolution must describe the property that may be injuriously or beneficially affected. The board shall have notice of the resolution published in a newspaper of general circulation published in the municipality once each week for two (2) consecutive weeks. The notice must name a date, at least ten (10) days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceeding.

(c) The works board shall consider the remonstrances, if any, and then take final action, confirming, modifying, or rescinding its original resolution. This action is conclusive as to all persons.

SECTION 7. [EFFECTIVE UPON PASSAGE] **(a) The general assembly urges the legislative council to assign to an interim or statutory study committee the topic of water rights, drainage, and utilities (including utility easements). If a committee is assigned the topic recommended for study by this SECTION, the committee shall consider the following:**

(1) Water and drainage issues as they relate to urban and rural areas.

(2) Water and drainage issues as they affect the:

(A) construction of Class 2 structures;

(B) development of land for residential purposes;

(C) development of land for commercial and industrial purposes; and

(D) operation of utilities (including utility easements).

(3) The appropriate role of drainage boards.

(4) The appropriate role of condemnation with respect to water rights, drainage, and water utilities (including utility easements).

(5) Whether the common enemy doctrine of water diversion should be retained, modified, or abrogated.

(b) This SECTION expires January 1, 2010.

- 1 SECTION 8. THE FOLLOWING ARE REPEALED [EFFECTIVE
- 2 JULY 1, 2009]: IC 8-1.5-2-11; IC 8-1.5-2-16.
- 3 SECTION 9. **An emergency is declared for this act.**
 (Reference is to EHB 1278 as reprinted April 15, 2009.)

Conference Committee Report
on
Engrossed House Bill 1278

Signed by:

Representative Moses
Chairperson

Senator Bray

Representative Smith M

Senator Lanane

House Conferees

Senate Conferees